

CHRISTOPHER CHIOU  
Acting United States Attorney  
Nevada Bar No. 14853  
STEVEN W. MYHRE  
DANIEL CLARKSON  
Assistant United States Attorneys  
501 Las Vegas Boulevard South, Suite 1100  
Las Vegas, Nevada 89101  
(702) 388-6336  
Steven.Myhre@usdoj.gov  
Daniel.Clarkson@usdoj.gov  
*Attorneys for the United States*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LATONIA SMITH,

Defendant.

No. 2:19-cr-00304-RFB-VCF

**Government's Response in  
Opposition to Defendant's Motion in  
Dismiss Indictment [ECF No. 188]**

Certification: This Response is timely filed.

On April 12, 2021, defendant Latonia Smith filed a 22-page Motion to Dismiss the Indictment. ECF No. 188 (hereinafter the "Motion"). Under Rule 12 of the Federal Rules of Criminal Procedure, LCR 12-1 of the local rules, and this Court's Order Regarding Pretrial Procedure (ECF No. 24), the deadline for filing motions attacking the sufficiency of the Indictment under Rule 12 has long since lapsed.

Moreover, both the local rules and the Court's Order on Pretrial Procedure provide the government with fourteen days to respond to motions of this nature. Here, the defendant initially filed the Motion on the docket as a Motion in Limine, which docket entry has since

1 been corrected by the Clerk of Court. That said, it is not clear whether the defendant intended  
2 by that filing to include this Motion in the schedule set by the Court for responses to be filed  
3 to motions in limine: 9 a.m. on April 14, less than two days from the date the 22-page motion  
4 was filed. Whatever the reason for the filing, the government asserts that the issues in the  
5 Motion have been waived as untimely filed and should be denied on that basis.

6 Moreover, in the event the Motion is not denied as waived, the government should be  
7 allowed until on or before 14 days from filing to respond, per local rule and this Court's  
8 previous Order. A fourteen-day response date, however, will leave the Motion still pending  
9 after the commencement of trial on April 22.

10 The Motion raises a host of issues, citing Supreme Court and Ninth Circuit  
11 authorities, among others, for various propositions, to include a constitutional challenge to  
12 the Indictment. The government takes the position that the Motion is without merit, but  
13 given the untimeliness of the Motion and the time constraints and press of schedule due to  
14 trial preparation, it is unable to adequately brief these issues in the little time remaining before  
15 the commencement of trial.

